

No-Fault Bulletin No. 2

NON-RENEWAL AND CANCELLATION LAW—NAMED DRIVER EXCLUSION

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The purpose of this Bulletin is to advise all insurance companies licensed in the automobile line in the State of North Dakota of the Insurance Department's administrative interpretation of the applicability of the named driver exclusion under North Dakota's cancellation and non-renewal law in view of the recent enactment of the "North Dakota Auto Accident Reparations Act", Ch. 26-41 of the North Dakota Century Code (S.L. 1975, Ch. 265).

Section 26-41-04(1) of the North Dakota Century Code provides that the owner of a motor vehicle required to be registered in North Dakota must continuously provide with respect to such motor vehicle, security for the payment of basic no-fault benefits and the liabilities covered under a motor vehicle liability insurance policy. The basic thrust of the provisions contained in Chapter 26-41 is that persons injured in motor vehicle accidents shall be compensated for the economic loss sustained by them through the payment of basic no-fault benefits. In enacting the no-fault law in North Dakota, the Legislature did not amend any other provisions pertaining to automobile insurance. However, there does appear to be a problem with the named driver exclusion under North Dakota's cancellation and non-renewal law and the enactment of North Dakota's new no-fault law. The issue can be simply stated as to whether or not it will be permissible to use the named driver exclusion in the future. This Department feels that the non-renewal and cancellation law is a special provision which prevails over the general proposition set forth in the no-fault law in regard to continually providing the coverage required by that law and that the conflict between the two provisions is not irreconcilable.

Section 26-02-31(1) defines an automobile liability policy and specifically provides that it shall include automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage or automobile physical damage coverage. These are the coverages which are specifically referred to in that subsection of the law. Thus, it appears to be the legislative intent that there are only two reasons for cancellation of an automobile liability insurance policy under Section 26-02-33 and that the insurers, or insurance companies, shall not

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cancel a policy in the case where the operator whose driver's license was, or is, suspended or revoked is excluded from coverage under the policy. Since "policy" is defined pursuant to the appropriate provision and the coverages specifically delineated under the definition of policy, the named driver exclusion can be made in regard to automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, or automobile physical damage coverage. However, as far as the definition of policy under the cancellation and non-renewal laws, no mention is made as to no-fault benefits. Thus, the provision pertaining to the named driver exclusion would not apply to the no-fault benefits coverage.

Companies are strongly urged to provide coverage on this basis for those policyholders who presently have coverage with their companies under a policy issued with a named driver exclusion.

If you have any questions in regard to this Bulletin, please feel free to contact the Department.

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Commissioner of Insurance